

Capacity to Change: The Role of Race & Ethnicity in Alternative Sentencing Decisions

An Honors Thesis (HONR 499)

by

Nathaniel Moore

Thesis Advisor

Brandy Rocheleau, J.D.

Ball State University

Muncie, Indiana

April 2020

Expected Date of Graduation

May 2020

Abstract

One of the greatest goals of the criminal justice system is to uphold justice. One of the major forms which this takes is assuring equality in punishment and sentencing. The present study seeks to analyze the use of alternative sentencing programs in federal property crime cases and see if there are racial or ethnic disparities in sentencing. Analysis of the federal property crime cases from the year 2018 finds that blacks and Hispanics were not significantly more or less likely to receive alternative sentences than whites were. However, it also finds that those of “other” races, such as Asian Americans, Native Americans, and Native Alaskans, were more likely than whites to receive an alternative sentence by a log odds factor of 2.85, significant at the 0.5 level. Additionally, it was found that sex, one of the control variables, held a significant relationship. Females, relative to males, had decreased log odds of receiving an alternative sentence by a factor of 3.24, significant at the 0.5 level.

Acknowledgements

I would like to thank Brandy Rocheleau for her advisement during this project. Her assistance was critical in helping me turn this otherwise difficult feat into a reality.

Process Analysis Statement

A research paper such as this one is valuable because it provides education on how research is conducted, which is helpful both for analyzing the research of others and for any research that I myself may do in the future. The process began with a general idea of an area of interest for research. From here, the first focal point became that of understanding what research had already been done, as well as understanding the relevant theories, both of which are things which are done while doing a literature review. With this knowledge, it better allows the researcher to know how the present study can add to that body of research. For example, in this paper, the idea of focusing specifically on property crimes was not originally part of the topic, but was chosen because most of the past literature did not focus the relationship between race and sentencing in property crimes. The methods section then became a way to establish a framework for the project. Then, in order to transform and analyze the data for the results section, a great deal of work in SPSS had to be done. Learning how to effectively use and navigate a data analysis program is a crucial skill which will undoubtedly be helpful for any future research I may do. Finally, in writing the results section, I'm able to learn how to make connections between prevalent theories in the field and the findings which occur in this research paper.

Introduction

One of the primary goals of the criminal justice system in the United States is to assure just sentencing. In order to maintain just sentencing, one of the values which the American citizenry tends to uphold is the value of equality. Given the role that discretion can play throughout the criminal justice process, a major area of concern is ascertaining that extralegal factors, and biases associated with them, do not influence how a person is treated by the criminal

justice system. Extralegal factors affecting sentencing decisions inherently take away from the just nature of the criminal justice system. This can then lead into more tangible harms such as loss of faith in government or civil unrest caused by the injustice. As a result, it is an important concern of United States government to attempt to control biases associated with extralegal factors.

The existence of racial and ethnic disparities within the criminal justice system is a well-established idea. However, its source, as well as the degree to which bias causes this disparity, is much disputed. The focal concerns theory of sentencing suggests that judges focus on a few key focal concerns in sentencing, namely the blameworthiness of the offender, protection of the community, and the practical constraints of sentencing (Steffensmeier, 1980; Steffensmeier, Ulmer, and Kramer, 2006). Steffensmeier et al. (1998) suggest that judges may not always be able to access all necessary information for decisions, and instead use “perceptual shorthand”, including stereotypes, prejudices, and other assumptions, to fill in those information gaps. Multiple studies have been performed which reaffirm the idea that racial and ethnic minorities are subjected to discriminatory sentencing practices (Albonetti, 1997; Crawford, Chiricos, & Kleck, 2006; Bales & Piquero, 2012). Some studies suggest that individual biases from roles such as judges or prosecutors play the primary role in creating this disparity (Yang, 2015; Rehavi and Starr, 2014). This idea is further supported by research which suggests that Hispanic offenders receive disproportionate sentences as well, especially in cases of drug crimes (Steffensmeier and Demuth, 2000).

The present study seeks to add to the current body of research by assessing the role that racial & ethnic biases play during the sentencing phase specifically. As a result, it would allow us to focus more specifically on the role that judicial discretion in sentencing plays in the racial

& ethnic disparity in sentencing. This will be done by looking at federal sentencing data from 2018. Furthermore, this study will seek to look directly at whether racial or ethnic disparities exist in the utilization of alternative sentencing, otherwise known as community corrections programs. In order to better focus on this goal, the present study will only analyze property crimes, done both to increase feasibility and to reduce variance between offenses. This study would answer the question as for whether racial or ethnic disparities exist in alternative sentencing decisions, and, if so, how significant of a role they play.

Literature Review

Focal Concerns Theory

When addressing the reason as for why racial & ethnic disparities in sentencing may occur, one of the prevailing theories is the focal concerns theory for sentencing. The focal concerns theory of sentencing suggests that there are three primary factors which judges take into consideration when making decisions with regard to sentencing. These factors are the degree to which the offender is to blame for the given offense, the desire to protect the community from further harm, and the practical effects of a given sentence (Steffensmeier, 1980; Steffensmeier, Ulmer, and Kramer, 2006).

The first factor, blameworthiness of the offender, looks to weigh the level of harm caused by the offender (Steffensmeier, 1980). By assessing this, judges seek to ascertain that the punishment for a given offense is proportional to the crime or harm done. This is an idea that fits with the “just desserts” sentencing philosophy, wherein the punishment should fit the crime (Steffensmeier, Ulmer, and Kramer, 2006).

The second factor focuses on the protection of the community. For this factor, judges look at the likelihood of future harm done by the individual (Steffensmeier, 1980). While blameworthiness of the offender seeks to punish based on the severity of the current offense, the concern of protection of the community is concerned with an offender's likelihood of being a further threat to the community, as well as how large of a threat that would be if they did act harmfully (Steffensmeier, Ulmer, and Kramer, 2006).

The final area of concern is the practical restraints of sentencing (Steffensmeier 1980). These restraints include things such as the limited resources of the criminal justice system or special areas of consideration or concern for a specific defendant (Steffensmeier, Kramer, and Ulmer, 1998). Due to cost restraints, judges may not be always able to sentence individuals as they would otherwise wish, especially when space or time restrictions would result in a lower quality of services or living for offenders and lessen the corrective potential of said programs.

Steffensmeier et al. (1998) suggest that judges are often unable to access all of the necessary information about a defendant in order to make a proper decision. As a result, they use stereotypes, prejudices, and other forms of assumptions, which they refer to as “perceptual shorthand”, to supplement the necessary information in order to make a decision. This is one reason why they suggest that biases based on factors like age, race, and gender have an impact on sentencing. This perceptual shorthand is not an independent focal concern, but rather a means through which the three focal concerns are addressed (Maddan and Hartley, 2018). In particular, perceptual shorthand is utilized to compensate for limited information about how an offender is likely to behave in the future, and whether this offender is likely to be a threat to the community in the future (Maddan and Hartley, 2018).

Depth of Racial and Ethnic Disparities

A significant amount of prior research has gone into assessing the extent of racial and ethnic bias in sentencing. When looking at federal sentencing data from 1993-1996, Steffensmeier and Demuth (2000) found racial and ethnic biases in sentencing in favor of whites over blacks and Hispanics over non-Hispanics. In particular, Hispanic drug offenders received noticeably disparate sentences, and Hispanic offenders overall receive even greater sentences than white or black offenders (Steffensmeier and Demuth, 2000). These findings have been found to be consistent with other studies (Steffensmeier and Demuth, 2006; Steffensmeier and Demuth, 2004; Spohn and Holleran, 2006).

Albonetti (1997) conducted a similar study, looking solely at drug offenders sentenced in 1991-1992. The study found that some of the disparity was caused by offense-related characteristics, but also factors such as race/ethnicity, gender, education status, and citizenship status (Albonetti, 1997). Crawford, Chiricos, and Kleck (2006) find that race plays a role in the likelihood of an offender being charged as a habitual offender. These findings are significant because they suggest that these extralegal factors do influence the length of sentencing which offenders receive.

In addition to focusing on differential sentencing in terms of length of prison sentences, other scholars have addressed racial and ethnic disparities in imprisonment. Bales & Piquero (2012) found that, even when legally relevant variables are controlled for, white offenders are less likely to be sentenced to imprisonment than their black or Hispanic counterparts. This increased likelihood of incarceration consistent with the findings of other scholars (Spohn and Holleran, 2006). Similarly, race and ethnicity appear to play a role in judicial discretion for downward departures in sentencing serious offenses (Kramer and Ulmer, 2006). This suggests

that racial and ethnic disparities can affect an individual's likelihood of being imprisoned, potentially in addition to the length of that incarceration or punishment.

When addressing the issue of racial and ethnic disparities in sentencing, it can be important to establish that not all disparities in sentencing are caused by discrimination. In a study seeking to address this issue, Rehavi and Starr (2014) found that significant amounts of racial disparity in federal sentencing can be attributed to legal factors such as prior criminal history and other case factors, and that gaps between rates of incarceration can be attributed to these legal factors. However, length of incarceration cannot be fully attributed to legal factors. They also found the prosecutorial decisions for charges sought as well as the use of mandatory minimum sentences combined explain a significant portion of the remaining disparity (Rehavi and Starr, 2014). By contrast, Spohn and Holleran (2006) found no significant impact on the length of sentencing but did find that race and ethnicity had an impact on the likelihood of an offender to receive a prison sentence. Tittle and Curran (1988) addressed the impact of discrimination in the juvenile justice system. They suggest that discriminatory sanctions are not universal but rather targeted to areas where nonwhite groups are deemed as a threat to the white social elite (Tittle and Curran, 1988). These findings are important in that they exemplify that racial and ethnic disparities are widespread throughout the legal system. However, it also suggests that racial and ethnic disparities may not be universally equal in their depths or impacts.

Yang (2015) addresses how the Supreme Court decision in *United States v. Booker* (2005) affected racial disparity in sentencing. The *Booker* decision invalidated federal sentencing guidelines, the result of which was an increase in judicial discretion, as judges were no longer required to adhere to those guidelines (Yang, 2015). The study found that racial disparities in sentencing increased after the *Booker* decision, especially in cases where the offense did not

carry a mandatory minimum sentence, which would then suggest that the *Booker* decision was the cause for this increase in disparity (Yang, 2015). If this is an accurate assessment, it would suggest that increases in judicial discretion lead to increases in racial and ethnic disparity in the criminal justice system.

Property Crime

The Federal Bureau of Investigation provides a Uniform Crime Report each year which compiles data on crimes brought to the attention of police (Federal Bureau of Investigation, 2016). As an organization which is part of the federal government, it serves as an excellent source of authority for categorical definitions for different types of crime. The FBI's Uniform Crime Report defines property crime as "the offenses of burglary, larceny-theft, motor vehicle theft, and arson. The object of the theft-type offenses is the taking of money or property, but there is no force or threat of force against the victims. The property crime category includes arson because the offense involves the destruction of property; however, arson victims may be subjected to force" (Federal Bureau of Investigation, 2016). As such, property crime can be assumed to refer to these four types of offenses: burglary, larceny-theft, motor vehicle theft, and arson.

Alternative Sentencing

Previous research has also addressed the role that racial and ethnic disparities play in sentencing to alternative sentencing, sometimes known as community corrections, programs. The United States Sentencing Commission provides definitions for a few forms of alternative sentencing within its guidelines manual. First, the USSC guidelines manual (2018) defines intermittent confinement as "remaining in the custody of the Bureau of Prisons during nights,

weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation or supervised release.” It defines community confinement as “residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours” (United States Sentencing Commission, 2018). Finally, it defines home detention as meaning “a program of confinement and supervision that restricts the defendant to his place of residence continuously, except for authorized absences, enforced by appropriate means of surveillance by the probation office. When an order of home detention is imposed, the defendant is required to be in his place of residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs, and such other times as may be specifically authorized” (United States Sentencing Commission, 2018).

In researching the role that race and ethnicity play in alternative sentences, Spohn and Holleran (2006) found that offender characteristics influenced the likelihood of an offender receiving a prison sentence. This is also supported by work from Bales & Piquero, (2012), which suggest that white offenders receive prison sentences less frequently than black or Hispanic offenders, with black offenders receiving the most disparate impact. Additionally, race and ethnicity appear to influence the likelihood of an offender receiving a downward departure, particularly in cases involving serious offenses (Kramer and Ulmer, 2006). These findings collectively suggest that an offender’s race or ethnicity can influence their likelihood of being placed in alternative sentencing programs.

Current Study

The present study seeks to determine whether there are racial and ethnic disparities in federal sentencing for property offenses. The present study will add to the current body of research by assessing whether similar trends about racial or ethnic disparities in sentencing are still present when looking at property offenses. The past body of research suggests that the form which racial or ethnic discrimination in sentencing may take is not the same throughout the criminal justice system. Additionally, the past body of research primarily looks at racial and ethnic disparities in sentencing as a whole and does not consider whether the presence of disparate sentencing may differ for crimes of different severity. When crimes of differential severity are addressed in the past body of research, serious, violent offenses tend to be given preference. While it is certainly important to consider if racial and ethnic discrimination occurs in sentencing of violent offenses, it can also be important to address whether similar patterns occur in lesser offenses such as property crimes.

The present study seeks to address this issue by looking specifically at property crime to see if trends of racial and ethnic disparities hold true. The present study will use the same definition for property crime as provided by the FBI's Uniform Crime Report, which includes the offenses of burglary, larceny-theft, automobile theft, and arson (Federal Bureau of Investigation, 2016). Additionally, not every property offense may receive a prison sentence, so the present study will be methodologically different from significant parts of the past body of research by considering if diversionary sentencing mechanisms are applied in a disparate manner as well. Focusing solely on property offenses also allows the study to be more focused and avoid concerns brought up through previous studies on how the forms which racially and ethnically discriminatory sentencing take may not always be the same.

Focal concerns theory and the concept of perceptual shorthand are important concepts for the present study. Perceptual shorthand explains why judges use discriminatory sources of information such as stereotypes or prejudices by suggesting that they fill in for a lack of adequate information to determine the likelihood that an offender would be a threat to the community. As such, it offers an important possible explanation as for why any disparities in sentencing found within the current study would occur.

In order to achieve the previously stated research goals, this study will have one primary research question. This question asks whether race and ethnicity affect a property crime offender's likelihood of receiving alternative sentencing programs. I hypothesize that there will be racial and ethnic disparities in the application of diversionary programs. I hypothesize that white offenders will be more likely to receive alternative sentences than their black or Hispanic counterparts. I believe that the idea of judges using perceptual shorthand to fill in gaps that they have in information about offenders is likely to still remain when assessing property offenses. Resultingly, I suspect that the decision to divert into alternative programs will also be subject to the influence of perceptual shorthand. Judges are likely to determine whether or not an offender would be well suited to diversionary programs based on their perception of the offender's threat to the community. If the hypothesis is held to be true, this would lend credence to the accuracy of the focal concerns theory of sentencing, as well as suggesting that disparate sentencing is a problem which occurs even in lesser crimes such as property offenses.

Methods

Sample & Data

The present study seeks to analyze the sentencing of federal property crimes. In order to achieve this goal, already collected data was taken from the United States Sentencing Commission's website. This data set includes all cases federally sentenced in fiscal year 2018. This data was collected through documents submitted by each district court within 30 days of the judgment (Reedt, Semisch, & Blackwell, 2013). These documents primarily consist of indictments and informations, plea agreements, presentence investigation reports, judgment and commitment orders, and statements of reasons (Reedt, Semisch, & Blackwell, 2013). Since the data set includes all federal cases for fiscal year 2018, it would most certainly be representative of the population, at least for that given year. However, it may not necessarily be representative of sentencing in other years, which becomes gradually more relevant as the year in question becomes further away from 2018.

From this point, the data set was filtered to only include cases of property crimes. As was previously stated, the FBI's Uniform Crime Report defines property crime as "the offenses of burglary, larceny-theft, motor vehicle theft, and arson. The object of the theft-type offenses is the taking of money or property, but there is no force or threat of force against the victims. The property crime category includes arson because the offense involves the destruction of property; however, arson victims may be subjected to force" (Federal Bureau of Investigation, 2016). The data set includes the offense types of burglary/trespass and arson, so the data was filtered to keep sentences for these types of crime. Theft shared a category with fraud and embezzlement, which are not part of the FBI's definition of property crimes, so the decision was made not to include theft offenses for the present study.

Concepts & Measures

The research question for the present study involves assessing how a defendant's race and ethnicity may influence their likelihood of receiving alternative sentencing programs. In order to evaluate this, a dummy variable was used to determine if a given offender was given an alternative sentence. An offender was considered to have been given an alternative sentence if they were subjected to home detention, community confinement, or intermittent confinement programs. Race was assessed categorically, with the categories being white, black, Hispanic, or other.

Additionally, a few other factors were analyzed as control variables. The first control variable used was the offender's sex, classified as a male or female dummy variable. Age was also used as a continuous variable. Additionally, the means of conviction for an offender was used as a control variable. It was defined as a dummy variable consisting of a conviction through a guilty plea or a conviction through a trial. Finally, the present study also controlled for an offender's level of education. This variable was defined as an ordinal variable which measured the highest level of education attained by the offender, with the categories being an education level below that of a high school graduate, that of a high school graduate, some college experience, or a college graduate.

Analytic Strategy

The present study will make use of SPSS statistics for analysis of the data. The first order of business would involve the collection of descriptive statistics. The next focus will be on analyzing the data to address the research question. In order to answer the research question, a binomial regression model will be used. Race will be used as the independent variable and alternative sentencing will be the dependent variable, with sex, age, education, and method of

conviction serving as control variables. Listwise deletion will be used to resolve any missing data within the cases.

Results & Discussion

The overall number of individuals who were analyzed for the study was relatively low, encompassing 76 individuals. Of this group, 10.7% were given an alternative sentence, while the remaining 89.3% did not. Whites made up the largest race category at 44% but were not a large enough group to constitute a simple majority. Of the remaining groups, Blacks made up 22.7%,

Table 1: Descriptive Statistics from Federal Property Crime Sentencing in 2018 (N = 76)		
Variable	Value/Range	Proportion/Mean
Race	White	44.0%
	Black	22.7%
	Hispanic	9.3%
	Other	24.0%
Alternative Sentence	Yes	10.7%
	No	89.3%
Sex	Male	84.2%
	Female	15.8%
Means of Conviction	Plea	90.8%
	Trial	9.2%
Level of Education	<HS	20.8%
	HS	43.1%
	Some College	25.0%
	College Grad	11.1%
Age	20-82	37.20

Hispanics made up 9.7%, and remaining racial groups, include those such as Asian Americans, Native Americans, and Native Alaskans, made up 24%. Males made up the vast majority of the sample, constituting 84.2% of the offenders studied. Additionally, the vast majority of these cases were settled by offenders pleading guilty, with only 9.2% being found guilty at trial.

Offenders with a high school level of education made up a plurality at 43.1%. Those with some college experience were at 25%, and those with less than a high school level of education weren't far behind at 20.8%. Relatively few, at 11.1%, had graduated college.

From here, binomial logistical regression was used to measure whether race had an impact on an individual's likelihood of receiving alternative sentences. The results of this analysis found that neither blacks nor Hispanics have significantly increased odds of receiving an alternative sentence. However, those in the "Other" category have increased log odds by a factor of 2.85 to receive an alternative sentence when compared to whites, significant at the 0.5 level. Additionally, females have a decreased log odds of receiving an alternative sentence by a factor of 3.24, relative to males, also significant at the 0.5 level. None of the other factors showed a significant relationship with an individual's likelihood of receiving an alternative sentence.

Table 2: Log odds predicting receiving alternate sentences based on race from 2018 Sentencing Data (N = 76)		
Variable	B	SE
Race	N/A	N/A
White	(Ref)	(Ref)
Black	-0.999	1.599
Hispanic	-18.044	13657.208
Other	2.850*	1.326
Male	(Ref)	(Ref)
Female	-3.237*	1.605

Plea	(Ref)	(Ref)
Trial	19.067	12615.839
Education Level	N/A	N/A
<HS	(Ref)	(Ref)
HS	-1.273	14453.693
Some College	18.780	11809.877
College Graduate	18.978	11809.877
Age (years)	-0.99	0.061

*= sig 0.05 **= sig 0.01 ***= sig 0.001

I originally hypothesized that white offenders would be more likely to receive alternative sentences than their black or Hispanic counterparts. However, instead I found that these minority groups do not seem to be given alternative sentences at a significantly different rate. This largely contradicts the previous body of research, in which Hispanics and African Americans were often shown to be subject to unjust discrimination.

The findings with regard to those of the “Other” category, however, are unique for a different reason. They do appear to be benefitting from being more likely to receive an alternative sentence than their counterparts. This would be in line with the focal concerns theory of sentencing and the idea of perceptual shorthand. However, it differs from its previous application, as it had been previously used with the idea that perceptual shorthand causes minority groups to be judged based on stereotypes, resulting in harsher sentences. In this case, we see that the Others group were more likely to receive an alternative sentence. Additionally, females were found to be less likely to receive alternative sentences than males. This would

once-again fit within focal concerns theory, with the differentiation that perceptual shorthand would now involve using the offender's sex to fill in gaps in information about them rather than race.

The present study was held back by a few limitations. The first of these limitations came in the definition of property crime. The data set counted larceny-theft in the same value as fraud or embezzlement, but larceny-theft is under the definition of property crime while fraud and embezzlement are not. As a result, this category was wholly left out of the analysis. Secondly, the sample size for the present study is rather limited. Only 76 individuals were assessed overall. Only 12 (15.8%) of the participants were female, and the "Others" category, while slightly more sizeable, contained only 18 (24%). This is problematic because the small sample size increases the likelihood that the results are due to random error, rather than any underlying truths about sentencing. Finally, the present study only addresses the year of 2018. This limits its ability to be generalized to other years beyond 2018. The present study did not have access to any variable which would allow it to control for socioeconomic status, so it is unknown if socioeconomic status is in any way related to the results of the study.

The findings from this study open the gateway to many new further areas of research. Perhaps the first and foremost of these new areas would be validating the accuracy of the present study by conducting similar studies over a broader span of time. Additionally, it would be important to consider if state courts find similar trends toward the sentencing of property crime to the trends shown here in federal courts. If the findings held here are found to be repeated, then future research may be aimed at looking to explain why Asian Americans, Native Americans, and Native Alaskans are more likely to receive an alternate sentence and why females are less likely to be given an alternate sentence. Future research which delves into races beyond simply

white, black, and Hispanic groups to further isolate where racial or ethnic bias may occur, if at all, would also be an incredibly important area of study. This is evidenced by the fact that those in the Others category in the present study were significantly more likely to receive an alternative sentence. Additionally, future research should look to address why women were shown to have log odds of 3.237 times less likely of receiving an alternative sentence. Through doing this, we will be able to better understand if extralegal factors are causing sentencing disparities, or, if not, what the true cause of those disparities would be.

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DATE: January 17, 2020

TO: Nathaniel Moore

FROM: Ball State University IRB

RE: IRB protocol # 1549792-1

TITLE: Racial Disparities in Post-Conviction Sentencing

SUBMISSION TYPE: New Project

DECISION: APPROVED

PROJECT STATUS: ACTIVE

DECISION DATE: January 17, 2020

REVIEW TYPE: Exempt Review

The designated reviewer for the Institutional Review Board (IRB) reviewed your protocol and determined the procedures you have proposed are appropriate for exemption under the federal regulations. As such, there will be no further review of your protocol, and you are cleared to proceed with the procedures outlined in your protocol. As an exempt study, there is no requirement for continuing review. Your protocol will remain on file with the IRB as a matter of record. All research under this protocol must be conducted in accordance with the approved submission and in accordance with the principles of the Belmont Report.

Exempt Categories:

	Category 1: Research conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.
	Category 2: Research that only includes interactions involving educational test (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met: (i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects; (ii) Any disclosure of the human subjects' responses outside

	the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or (iii) The information obtained is recorded by the investigator in such a manner that the identity of the humans subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 46.111(a)(7).
	Category 3: Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met: (A) The information obtained is recorded by the investigator in such a manner that the identity of human subjects cannot be readily ascertained, directly or through identifiers linked to the subjects; (B) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or (C) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can be readily ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by 46.111(a)(7).
X	Category 4: Secondary research for which consent is not required.
	Category 5: Research and demonstration projects that are conducted or supported by a Federal department or agency, or otherwise subject to the approval of department or agency heads, and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs.
	Category 6: Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.
	Category 7: Storage or maintenance for secondary research for which broad consent is required: Storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use if an IRB conducts a limited IRB review and makes the determinations required by 46.111(a)(8).
	Category 8: Secondary research for which broad consent is required: Research involving the use of identifiable private information or identifiable biospecimens for secondary research use, if the following criteria are met: (1) Broad consent for the storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens was obtained in accordance with §46.116(a)(1) through (4), (a)(6), and (d); (2) Documentation of informed consent or waiver of documentation of consent was obtained in accordance with §46.117; and (3) An IRB conducts a limited IRB review and makes the determination required by §46.111(a)(7) and makes the determination that the research to be conducted is within the scope of the broad consent referenced in paragraph (d)(8)(i) of this section; and (iv) The investigator does not include returning individual research results to participants as part of the study plan. Note: This provision does not prevent an investigator from abiding by any legal requirements to return individual research results.

Ball State Specific Exempt Categories

	Category 9: Research involving publicly observable online behavior. Any online behavior that requires a person's permission to access is considered private and does not fall under this category. Information that cannot be accessed by the general population would also be considered private.
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	Category 10: Research involving BSU students who are under 18 but have legal authority over their FERPA protected information. Only studies that fall into another exempt category except for sampling from BSU students who are under 18 can be considered exempt in this category.
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Editorial Notes:

1. Approved

While your project does not require continuing review, it is the responsibility of the P.I. (and, if applicable, faculty supervisor) to inform the IRB if the procedures presented in this protocol are to be modified or if problems related to human research participants arise in connection with this project. **Any procedural modifications must be evaluated by the IRB before being implemented, as some modifications may change the review status of this project.** Please contact Sandra Currie at (765) 285-5052 or slcurrie@bsu.edu if you are unsure whether your proposed modification requires review or have any questions. Proposed modifications should be addressed in writing and submitted electronically to the IRBNet as a "Modification/Amendment" for review. Please reference your IRB protocol number 1549792-1 in any communication to the IRB regarding this project.

In the case of an adverse event and/or unanticipated problem, you will need to submit written documentation of the event to IRBNet under this protocol number and you will need to directly notify the Office of Research Integrity (<http://www.bsu.edu/irb>) **within 5 business days**. If you have questions, please contact Sandra Currie at (765) 285-5052 or slcurrie@bsu.edu.

Reminder: Even though your study is exempt from the relevant federal regulations of the Common Rule (45 CFR 46, subpart A), Ball State has elected to hold you accountable to these regulations to encourage best research practices. You and your research team are not exempt from ethical research practices and should therefore employ all protections for your participants and their data which are appropriate to your project.